frontier

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April 16, 1997

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-149

Dear. Mr. Caton:

Enclosed for filing please find an original plus two (2) copies of the Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Ms. Janice Myles

ITS, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934	)	**CC Docket No. 96-149**

COMMENTS OF FRONTIER CORPORATION

Frontier Corporation ("Frontier") submits these comments in response to the Commission's Public Notice concerning the interpretation of section 272(e)(4) of the Communications Act of 1934, as amended by the Telecommunications Act of 1934 ("Act").[1] In response to an order of the United States Court of Appeals for the District of Columbia Circuit,[2] the Commission requests comment on its prior interpretation that section 272(e)(4) does not confer a substantive grant of authority for a Bell company to provide certain interLATA services prior to section 271 approval or to provide wholesale interLATA services to its affiliate after such affiliate receives section 271

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1 *Comments Requested in Connection with Expedited Reconsideration of Interpretation of Section 272(e)(4),* CC Dkt. 96-149, Public Notice, DA 97-666 (April 3, 1997) ("Public Notice").

2 *Bell Atlantic v. FCC*, No. 97-1067, Order (D.C. Cir. March 31, 1997).

authority.[3] As Frontier demonstrates, the Commission's conclusions are correct in their entirety and should be affirmed upon reconsideration.

Argument

I. SECTION 271 CONTAINS NO EXCEPTION THAT WOULD PERMIT BELL COMPANY ENTRY INTO THE IN-REGION, INTERLATA BUSINESS PRIOR TO RECEIVING THE REQUISITE AUTHORITY.

Although the Bureau's first question focuses upon section 272(a), it is important to place that section in the context of the structure of Part III of the Act. By its terms, the Act is clear. Section 271 -- not section 272 -- contains the substantive grant of authority to provide interLATA services to the Bell companies, subject to their meeting certain requirements.[4] However, section 271(b)(1) contains a flat prohibition on the provision by a Bell company of in-region, interLATA services prior to receiving certification to do so. This section does not distinguish wholesale from retail services. It prohibits the "provision of interLATA services originating in any of [that Bell company's] in-region states."[5] Regardless of what company carries the call -- or whether the carrier involved is providing service on a wholesale or retail basis -- a call that originates in one LATA and terminates outside the LATA is an interLATA call. Section 271(b)(1)

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3 *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, CC Dkt. 96-149, First Report and Order and Notice of Proposed Rulemaking FCC 96-489, ¶¶ 261-67 (Dec. 24, 1996).

4 *See* 47 U.S.C. § 271(c).

5 47 U.S.C. § 271(b)(1).

prohibits the Bell companies from providing such services until they have received certification to do so.

The Act, which provided for relief from the restrictions on the Bell companies contained in the Modification of Final Judgment ("MFJ"),[6] presumably was drafted with the scope of those restrictions clearly in mind. It is beyond doubt -- and not even the Bell companies would seriously dispute -- that the MFJ prohibited them from providing interLATA services on a wholesale basis. On this basis alone, it cannot seriously be contended that section 271(b)(1) implicitly permits the Bell companies to provide in-region, interLATA services on a wholesale basis prior to receiving 271 authorization.

Thus, the short answer to the Bureau's question is that a Bell company may provide *no*, otherwise prohibited, interLATA services -- wholesale or retail, to an affiliate or a non-affiliate -- prior to receiving section 271 authorization.

II. SECTION 272(a) DOES NOT CONTAIN A SUBSTANTIVE GRANT OF INTERLATA AUTHORITY.

Despite the clear language of section 271(b)(1), the Bell companies appear to contend that section 272 contains substantive grants of authority independent of section 271. On the face of the statute, this argument is meritless. Section 272 is entitled "SEPARATE AFFILIATE; SAFEGUARDS." This section describes the conditions -- in addition to the checklist requirements -- under which the Bell companies may exercise whatever authority the

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[6] 47 U.S.C. § 601(a)(1).

Commission may ultimately grant pursuant to section 271. Nowhere does section 272 -- explicitly or implicitly -- confer in-region, interLATA authority independent of the requirements of section 271.

The Bell companies' apparent contention[7] that they do not "originate" calls when they provide service on a wholesale basis is incorrect. Section 272(a) reads, in relevant part:

> (1) A Bell operating company (including any affiliate) which is a local exchange company subject to the requirements of section 251(c) may not provide any services described in paragraph (2) unless it provides that service through one or more affiliates that
>
> (A) are separate from any operating company entity that is subject to the requirements of section 251(c)
>
> (B) meets the requirement of subsection (B).
>
> (2) The services for which a separate affiliate is required by paragraph (1) are:
>
> (B) Origination of interLATA telecommunications services....[8]

As noted above, section 271(b)(1) uses a form of the word "originate" and prohibits the Bell companies from engaging in the in-region, interLATA business. Use of a different form of the same word cannot sensibly lead to a wholly-different result -- even if section 272 were an independent grant of authority -- which it is not.

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7 Public Notice at 2.

8 47 U.S.C. §272(a).

Section 272(a) provides no basis for the Bell companies' claims that they may provide wholesale in-region, interLATA services -- to affiliates or otherwise.

III. SECTION 272(e)(4) PROVIDES EVEN LESS OF A BASIS TO SUPPORT THE BELL COMPANIES' CLAIMS.

Section 272(e)(4) reads:

> A Bell company and its affiliate that is subject to the requirements of section 251(c) --
>
> (4) may provide any intraLATA or interLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

The Bell companies' reading of section 272(e)(4) assumes, first, that section 272, in general, is an independent grant of authority; second, that the term "origination" -- as used in section 272(a) -- applies only to retail services; and third, that it permits the provision of any and all interLATA services.

As Frontier has demonstrated above, the first two assumptions are patently false. The third assumption is equally incorrect -- even as it applies to the provision of in-region, interLATA wholesale services to an interexchange affiliate. The use of the term "intraLATA" in section 272(e)(4) indicates that -- consistent with the rest of section 272 -- this section is not an independent grant of authority. The Bell companies were -- prior to the passage of the Act -- permitted to provide intraLATA services. They were also, however, permitted to provide certain types of interLATA services, *e.g.*, corridor services.[9] Section

[9] *United States v. Western Elec. Co.*, 569 F. Supp. 1057, 1107 (D.D.C. 1983).

272(e)(4) merely permits the Bell companies to provide such services to their interexchange affiliates subject to non-discrimination requirements. This result should hardly be surprising.

Moreover, even if the Bell companies' interpretation of section 272(e)(4) were correct -- *i.e.,* that they could offer interLATA services to their interexchange affiliates after such affiliates received section 271 authority -- it would not advance their case. Absent section 271 authority to do so, a Bell company may *not* offer in-region, interLATA services to a non-affiliate.[10] Therefore, it may not -- without running afoul of the very non-discrimination requirements contained in section 272(e)(4) -- offer such services to its interexchange affiliate.

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[10] *See* Parts I, II, *supra*.

Conclusion

For the foregoing reasons, the Commission should reaffirm its conclusions that a Bell company may not, absent authorization: (a) generally offer in-region, interLATA wholesale services; and (b) offer such services to its interexchange affiliates.

Respectfully submitted,

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April 16, 1997

Certificate of Service

I hereby certify that copies of the foregoing Comments of Frontier Corporation were served by first-class mail, postage prepaid, upon the parties on the attached service list.

Michael J. Shortley, III